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Legislative History – Montana Session Law

Chapter: 679 Session L: 2025
Bill Number: HB 432

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☒
Third Reading Bill	☒
Final Version of Bill	☒

House

Committee: Natural Resources

Hearing Date(s): 02/13/2025

Committee Report:

Senate

Committee: Natural Resources

Hearing Date(s): 03/31/2025

Committee Report:

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: Charlotty Herman
Date: 05/18/26
Notes: No minutes or exhibits; no conference committee

Bill No.	Chapter No.
HB 343	Ch. 647
HB 344	Ch. 264
HB 345	Ch. 441
HB 346	Ch. 442
HB 348	Ch. 648
HB 349	Ch. 443
HB 350	Ch. 444
HB 351	Ch. 445
HB 352	Ch. 265
HB 354	Ch. 446
HB 355	Ch. 447
HB 356	Ch. 649
HB 357	Ch. 122
HB 358	Ch. 448
HB 359	Ch. 449
HB 365	Ch. 450
HB 367	Ch. 266
HB 368	Ch. 771
HB 372	Ch. 676
HB 380	Ch. 267
HB 381	Ch. 677
HB 384	Ch. 451
HB 387	Ch. 268
HB 388	Ch. 269
HB 391	Ch. 270
HB 392	Ch. 650
HB 393	Ch. 271
HB 394	Ch. 272
HB 396	Ch. 651
HB 397	Ch. 273
HB 398	Ch. 274
HB 399	Ch. 121
HB 400	Ch. 275
HB 401	Ch. 276
HB 403	Ch. 277
HB 406	Ch. 652
HB 409	Ch. 20
HB 411	Ch. 653
HB 413	Ch. 278
HB 414	Ch. 279
HB 415	Ch. 280
HB 416	Ch. 452
HB 419	Ch. 654
HB 421	Ch. 655
HB 423	Ch. 281
HB 424	Ch. 678
HB 426	Ch. 119
HB 427	Ch. 483
HB 428	Ch. 282
HB 430	Ch. 283
HB 431	Ch. 37
HB 432	Ch. 679
HB 434	Ch. 120
HB 435	Ch. 284
HB 438	Ch. 285
HB 441	Ch. 453
HB 442	Ch. 286
HB 443	Ch. 287
HB 444	Ch. 656
HB 446	Ch. 657
HB 447	Ch. 288
HB 448	Ch. 289
HB 449	Ch. 290
HB 450	Ch. 291
HB 454	Ch. 292
HB 455	Ch. 293
HB 458	Ch. 294
HB 463	Ch. 295
HB 464	Ch. 296
HB 466	Ch. 297
HB 467	Ch. 298
HB 468	Ch. 299
HB 471	Ch. 300
HB 473	Ch. 301
HB 474	Ch. 302
HB 475	Ch. 303
HB 476	Ch. 304
HB 480	Ch. 680
HB 483	Ch. 658
HB 486	Ch. 305
HB 487	Ch. 306
HB 490	Ch. 681
HB 491	Ch. 307
HB 492	Ch. 682
HB 493	Ch. 308
HB 495	Ch. 683
HB 496	Ch. 309
HB 497	Ch. 454
HB 499	Ch. 774
HB 502	Ch. 310
HB 503	Ch. 311
HB 504	Ch. 312
HB 505	Ch. 684
HB 509	Ch. 313
HB 513	Ch. 685
HB 514	Ch. 686
HB 515	Ch. 687
HB 516	Ch. 688
HB 520	Ch. 314
HB 521	Ch. 315
HB 523	Ch. 316
HB 527	Ch. 689
HB 530	Ch. 317
HB 531	Ch. 318
HB 532	Ch. 484
HB 533	Ch. 485
HB 534	Ch. 486
HB 535	Ch. 455
HB 538	Ch. 456
HB 539	Ch. 457
HB 543	Ch. 487
HB 544	Ch. 319
HB 545	Ch. 659
HB 549	Ch. 488
HB 553	Ch. 458
HB 554	Ch. 459
HB 561	Ch. 489
HB 562	Ch. 460
HB 563	Ch. 490
HB 566	Ch. 491
HB 567	Ch. 492
HB 568	Ch. 493
HB 571	Ch. 494
HB 572	Ch. 461
HB 573	Ch. 462
HB 574	Ch. 495
HB 575	Ch. 690
HB 576	Ch. 496
HB 578	Ch. 463
HB 580	Ch. 497
HB 582	Ch. 498
HB 584	Ch. 691
HB 586	Ch. 692
HB 587	Ch. 464
HB 588	Ch. 693
HB 589	Ch. 499
HB 590	Ch. 694
HB 591	Ch. 320
HB 592	Ch. 695
HB 595	Ch. 321
HB 599	Ch. 696
HB 600	Ch. 322
HB 601	Ch. 465
HB 602	Ch. 697
HB 603	Ch. 323
HB 606	Ch. 466
HB 611	Ch. 467
HB 612	Ch. 324
HB 614	Ch. 325
HB 616	Ch. 326
HB 620	Ch. 698
HB 621	Ch. 699
HB 623	Ch. 700
HB 624	Ch. 701
HB 625	Ch. 327
HB 626	Ch. 702
HB 627	Ch. 660
HB 629	Ch. 328
HB 631	Ch. 329
HB 632	Ch. 330
HB 633	Ch. 703
HB 636	Ch. 500
HB 638	Ch. 331
HB 641	Ch. 704
HB 642	Ch. 332
HB 643	Ch. 777
HB 648	Ch. 333
HB 650	Ch. 334

HB 431 INTRODUCED BY OVERSTREET, GREG *LC2760 DRAFTER: R. WEISS*

REVISE LAWS RELATED TO THE JUDICIAL STANDARDS COMMISSION

2/07	(H) INTRODUCED		
2/10	(H) REFERRED TO COMMITTEE		
2/10	(H) FIRST READING		
2/12	(H) HEARING		
2/21	(H) COMMITTEE EXEC ACTION — BILL PASSED	20	0
2/21	(H) COMMITTEE REPORT — BILL PASSED		
2/24	(H) SCHEDULED FOR 2ND READING		
2/24	(H) 2ND READING PASSED	100	0
2/25	(H) SCHEDULED FOR 3RD READING		
2/25	(H) 3RD READING PASSED	100	0
	(H) TRANSMITTED TO SENATE		
2/26	(S) FIRST READING		
2/28	(S) REFERRED TO COMMITTEE		
3/03	(S) HEARING		
3/04	(S) COMMITTEE EXEC ACTION — BILL CONCURRED	5	3
3/04	(S) COMMITTEE REPORT — BILL CONCURRED		
3/17	(S) SCHEDULED FOR 2ND READING		
3/17	(S) 2ND READING CONCURRED	44	6
3/18	(S) SCHEDULED FOR 3RD READING		
3/18	(S) 3RD READING CONCURRED	43	6
3/18	(H) SENT TO ENROLLING		
3/19	(H) RETURNED FROM ENROLLING		
3/21	(H) SIGNED BY SPEAKER		
3/24	(S) SIGNED BY PRESIDENT		
3/25	(H) TRANSMITTED TO GOVERNOR		
3/27	(H) SIGNED BY GOVERNOR		
3/27	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 37		
	EFFECTIVE DATE: 3/27/2025 - ALL SECTIONS		

HB 432 INTRODUCED BY DARLING, JULIE *LC1458 DRAFTER: A. SANDRU*

REVISE WATER LAWS CONCERNING EXCEPTIONS TO CHANGE IN APPROPRIATION RIGHT PROCESS

2/07	(H) INTRODUCED		
2/07	(H) FISCAL NOTE REQUESTED		
2/10	(H) REFERRED TO COMMITTEE		
2/10	(H) FIRST READING		
2/13	(H) FISCAL NOTE RECEIVED		
2/13	(H) FISCAL NOTE SIGNED		
2/13	(H) FISCAL NOTE PRINTED		
2/13	(H) HEARING		
2/26	(H) COMMITTEE EXEC ACTION — BILL PASSED AS AMENDED	11	3
2/27	(H) COMMITTEE REPORT — BILL PASSED AS AMENDED		
3/03	(H) SCHEDULED FOR 2ND READING		
3/03	(H) 2ND READING MOTION TO AMEND FAILED	34	65
3/03	(H) 2ND READING PASSED	95	4
3/04	(H) SCHEDULED FOR 3RD READING		
3/04	(H) 3RD READING PASSED	93	6
	(H) TRANSMITTED TO SENATE		
3/05	(S) REFERRED TO COMMITTEE		
3/31	(S) HEARING		

4/07	(S) TABLED IN COMMITTEE	6	5
4/23	(S) COMMITTEE EXEC ACTION — BILL CONCURRED	8	3
4/24	(S) COMMITTEE REPORT — BILL CONCURRED		
4/25	(S) SCHEDULED FOR 2ND READING		
4/25	(S) 2ND READING CONCURRED	45	3
4/28	(S) SCHEDULED FOR 3RD READING		
4/28	(S) 3RD READING CONCURRED	45	4
4/28	(H) SENT TO ENROLLING		
4/29	(H) RETURNED FROM ENROLLING		
5/02	(H) SIGNED BY SPEAKER		
5/06	(S) SIGNED BY PRESIDENT		
5/07	(H) TRANSMITTED TO GOVERNOR		
5/13	(H) SIGNED BY GOVERNOR		
5/19	CHAPTER NUMBER ASSIGNED CHAPTER NUMBER 679 EFFECTIVE DATE: 10/01/2025 - ALL SECTIONS		

HB 433 INTRODUCED BY NIKOLAKAKOS, GEORGE *LC2524 DRAFTER: J. BURKHARDT*

PRESERVE RIGHT TO KEEP AND BEAR ARMS VIA A PRESUMPTION OF INNOCENCE

2/07	(H) INTRODUCED		
2/10	(H) REFERRED TO COMMITTEE		
2/10	(H) FIRST READING		
2/12	(H) HEARING CANCELED		
2/12	(H) HEARING		
2/21	(H) COMMITTEE EXEC ACTION — BILL PASSED	12	8
2/21	(H) COMMITTEE EXEC ACTION — BILL PASSED		
2/21	(H) COMMITTEE REPORT — BILL PASSED		
3/03	(H) SCHEDULED FOR 2ND READING		
3/03	(H) 2ND READING MOTION TO AMEND FAILED	2	97
3/03	(H) 2ND READING NOT PASSED	13	86
3/12	(H) MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL DIED IN PROCESS		

HB 434 INTRODUCED BY WALSH, KEN *LC4256 DRAFTER: J. WALKER*

REVISE BANKING LAWS RELATING TO INTERACTIVE TELLER MACHINES

2/07	(H) INTRODUCED		
2/10	(H) REFERRED TO COMMITTEE		
2/10	(H) FIRST READING		
2/10	(H) HEARING		
2/14	(H) HEARING CANCELED		
2/14	(H) HEARING		
2/19	(H) COMMITTEE EXEC ACTION — BILL PASSED	20	0
2/19	(H) COMMITTEE REPORT — BILL PASSED		
2/21	(H) SCHEDULED FOR 2ND READING		
2/21	(H) 2ND READING PASSED	100	0
2/22	(H) SCHEDULED FOR 3RD READING		
2/22	(H) 3RD READING PASSED	98	0
	(H) TRANSMITTED TO SENATE		
2/25	(S) FIRST READING		
3/03	(S) REFERRED TO COMMITTEE		
3/06	(S) HEARING		
3/15	(S) HEARING		
3/19	(S) COMMITTEE EXEC ACTION — BILL CONCURRED	11	0

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2027 Biennium

Bill#/Title: **HB0432.01: Revise water laws concerning exceptions to change in appropriation right process**

Primary Sponsor: Julie Darling Status: As Introduced

☐ Included in the Executive Budget ☐ Needs to be included in HB 2 ☐ Significant Local Gov Impact

☐ Significant Long-Term Impacts ☐ Technical Concerns ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Expenditures				
General Fund (01)	$87,044	$0	$0	$0
State Special Revenue (02)	$13,006	$0	$0	$0
Revenues				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$0	$0	$0	$0
Net Impact	($87,044)	$0	$0	$0
General Fund Balance				

Description of fiscal impact

HB 432 revises water laws concerning exceptions to the change in the appropriation right process. The Department of Natural Resources and Conservation (DNRC) will require enhancements to the Water Rights Information System (WRIS) to implement the changes in HB 432.

FISCAL ANALYSIS

Assumptions

Department of Natural Resources and Conservation (DNRC)

1. The Water Rights Information System (WRIS) enhancements will be done under DNRC's current IT contract with an amendment for the additional work. It will take approximately 667 hours of contractor time at a rate of $150 per hour, for an approximate cost of $100,050 in FY 2026.
2. DNRC assumes that with the changes in HB 432 there is a potential for increased number of applications. However, the department's processing time for those applications will be decreased due to a simplified process. The department will absorb the work with existing staff.
3. The expenses will be funded in alignment with the current funding structure of the Water Rights Bureau in DNRC of 87% general fund and 13% water rights state special revenue.

Fiscal Analysis Table

Department of Natural Resources and Conservation

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Fiscal Impact				
Expenditures				
Operating Expenses	$100,050	$0	$0	$0
TOTAL Expenditures	**$100,050**	**$0**	**$0**	**$0**
Funding of Expenditures				
General Fund (01)	$87,044	$0	$0	$0
State Special Revenue (02)	$13,006	$0	$0	$0
TOTAL Funding of Expenditures	**$100,050**	**$0**	**$0**	**$0**
Revenues				
Net Impact to Fund Balance (Revenue minus Funding of Expenditures)				
General Fund (01)	($87,044)	$0	$0	$0
State Special Revenue (02)	($13,006)	$0	$0	$0

Sponsor's Initials	Date	Budget Director's Initials	Date
	2/13/25		2/12/2025

HOUSE BILL NO. 432

INTRODUCED BY J. DARLING, W. GALT, W. MCKAMEY, D. HARVEY, K. WALSH, R. MINER, J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WATER LAWS CONCERNING EXCEPTIONS TO THE CHANGE IN APPROPRIATION RIGHT PROCESS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 3-7-224, 85-2-309, 85-2-402, AND 85-2-407, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Changes in appropriation rights -- exceptions.** (1) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system as defined in 75-6-102 if the redundant water supply well:

(i) withdraws water from the same source aquifer as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) (i) Within 60 days of completion of a redundant water supply well and the infrastructure necessary to use the well, the appropriator shall file a correct and complete notice of change in appropriation right for redundant water supply well construction with the department on a form provided by the department. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection (1)(c)(i) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(ii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of change in appropriation right for redundant water supply well construction has been filed with the department.

(2) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and the distance between the replacement well and the well being replaced is no greater than 200 feet;

(iv) the water from the replacement well is appropriated from the same source aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct, and complete notice of change in appropriation right for a replacement well is submitted to the department as provided in subsection (2)(b).

(b) The appropriator shall file a correct and complete notice of change in appropriation right for a replacement well with the department on a form provided by the department within 60 days after completion of a replacement well and appropriation of ground water for a beneficial use.

(c) For each well that is replaced under this subsection (2), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(3) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening

water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct, and complete notice of change in appropriation right for a replacement point of diversion is submitted to the department as provided in subsection (3)(b).

(b) The appropriator shall file a correct and complete notice of change in appropriation right for a replacement point of diversion with the department on a form provided by the department within 60 days after completion of a replacement in point of diversion.

(4) (a) A municipality as defined in 7-1-4121 or a county water and sewer district organized under Title 7, chapter 13, part 22, may change the place of use for an unperfected municipal use permit or water reservation without the prior approval of the department if:

(i) the flow rate authorized by the permit or water reservation will not be exceeded;

(ii) the volume authorized by the permit or water reservation will not be exceeded;

(iii) the place of use is within:

(A) the municipality's land use plan and future land use map boundary duly adopted by the municipality pursuant to Title 76, chapter 25;

(B) the municipality's growth policy boundary duly adopted by the municipality pursuant to Title 76, chapter 1; or

(C) a county water and sewer district's service area boundary adopted under Title 7, chapter 13, part 23;

(iv) all water being diverted by the system is being measured and reported annually to the department; and

(v) there are no other changes to the water right or rights.

(b) The appropriator shall file a correct and complete notice of change in appropriation right for municipal use with the department on a form provided by the department within 180 days of annexation by a municipality under Title 7, chapter 2, part 47, or addition of land to a county water and sewer district under Title 7, chapter 13, part 23.

(c) A notice of change in appropriation right for municipal use may include a change in place of use for a water right that is not an unperfected permit or water reservation if:

(i) the criteria in subsection (4)(a) are satisfied for each unperfected permit and water reservation;

(ii) the criteria in subsection (4)(a) are satisfied for each additional water right being changed;

(iii) the unperfected volume of the unperfected permit or water reservation is adequate to satisfy the additional water use needs of the entire additional place of use;

(iv) the existing place of use is the same for all rights being changed; and

(v) all rights being changed share the same common distribution system.

(5) (a) An appropriator with a water right for stock use may add or move stock tanks without the prior approval of the department if:

(i) stock tanks are added to a water right for livestock direct from source;

(ii) additional stock tanks are added to an existing stock watering system; or

(iii) stock tanks are moved on an existing stock watering system.

(b) The following requirements must be met for a change filed under this subsection (5):

(i) the diverted flow rate of the stock watering system may not exceed the historical diverted flow rate of the stock watering system. If stock tanks are being added to a livestock direct from source water right, the maximum flow rate for the diversion to the tanks may not exceed 35 gallons a minute.

(ii) the number of stock animal units that will be watered on the system may not exceed the historical number of stock animal units watered;

(iii) the stock watering system infrastructure is adequate to control diversions and prevent waste of water; and

(iv) the appropriator has a possessory interest or the written consent of a person with a possessory interest in the property where the water is to be put to beneficial use or, if the proposed change involves a point

of diversion, conveyance, or place of use on national forest system lands, the appropriator has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) The appropriator shall file a correct and complete notice of change in appropriation right for stock tanks with the department on a form provided by the department within 60 days after stock tanks are added or moved.

(d) A temporary change in appropriation right for stock tanks may be authorized in accordance with 85-2-407.

(6) (a) If the department determines a notice of change in appropriation filed pursuant to subsections (1) through (5) is not correct and complete, the department shall return the notice to the appropriator, along with a notification describing the defects. A notice of change in appropriation right that is not corrected and completed within 60 days of the notification is terminated.

(b) Within 90 days of determining a notice of change in appropriation right is correct and complete, the department shall determine if the applicable criteria for issuance of a change in appropriation right are satisfied, and:

(i) if the department determines that the notice of change in appropriation right satisfies the applicable criteria in subsection (1), (2), (3), (4), or (5), the department shall issue an authorization of a change in appropriation right; or

(ii) if the department determines that the notice of change in appropriation right does not satisfy the criteria in subsection (1), (2), (3), (4), or (5), the department shall notify the appropriator, and the appropriator shall submit an application for a change in appropriation right to the department pursuant to 85-2-402.

(7) (a) If an authorization of a change in appropriation right is issued under subsection (3), (4), or (5), the department shall prepare a public notice that includes a summary of the change in appropriation right. The public notice must state that within no more than 45 days after the date of publication, a person may file with the department a written objection to the authorization of the change in appropriation right. The department shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) The department shall also serve the notice by first-class mail on:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed as defined in 70-20-115 of property that according to the records of the department may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in the department's discretion, also serve notice on any state agency or other person the department believes may be interested in or affected by the proposed appropriation.

(d) The department shall file in the department's records proof of service by affidavit of the publisher in cases of notice by publication and by affidavit of the department in cases of service by mail.

(8) (a) An objector to a change authorization issued under subsection (3), (4), or (5) shall file a correct and complete objection on a form prescribed by the department on or before the date specified in the notice provided under subsection (7).

(i) A person has standing to file an objection under this subsection (8) if the property, water rights, or interests of the person would be adversely affected by the proposed change.

(ii) The department shall adopt rules delineating the components of a correct and complete objection.

(iii) The department shall notify the objector of any defect in an objection. An objection not corrected or completed within 15 business days from the date of notification of the defect is terminated.

(iv) An objection is valid if the objector has standing, has filed a correct and complete objection within the prescribed time, and has stated the applicable information required under this subsection (8) and the rules of the department.

(v) An objection must state facts indicating that the change in appropriation right:

(A) will adversely affect the use of the water rights of the objector or of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3; or

(B) does not satisfy the applicable criteria set forth in subsection (3), (4), or (5).

(b) If a valid objection is filed, the department shall hold a contested case hearing pursuant to 85-2-309. The contested case hearing is limited to those issues for which a correct and complete objection is filed.

The appropriator changing the water right bears the burden of proof of lack of adverse effect or any of the criteria for which a correct and complete objection is filed.

(c) If the department determines after a contested case hearing on the objection that the rights of other appropriators have been or will be adversely affected or that the change in appropriation right does not satisfy the criteria set forth in subsection (3), (4), or (5), the department may revoke the change in appropriation right or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

Section 2. Section 3-7-224, MCA, is amended to read:

"**3-7-224. (Temporary) Jurisdiction of chief water judge and associate water judge.** (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309, all matters relating to the determination of existing water rights within the boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702.

(3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief water judge and the associate water judge have the same powers as a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2). (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)

3-7-224. (Effective October 1, 2025) Jurisdiction of chief water judge and associate water judge. (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief water judge and the associate water judge have the same powers as a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309, ~~or~~ 85-2-402, or [section 1] as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2)."

Section 3. Section 85-2-309, MCA, is amended to read:

"**85-2-309. Hearings on objections -- jurisdiction.** (1) If the department determines that an objection to an application for a permit under 85-2-311, ~~or~~ an application for a change in appropriation right under 85-2-402, or a notice of change in appropriation right under [section 1] states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 4. Section 85-2-402, MCA, is amended to read:

"**85-2-402. Changes in appropriation rights -- definition.** (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsections (15) and (16) of this section~~ [section 1], an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(2) Except as provided in subsections (4) through (6)~~, (15), (16), and (18)~~ and, if applicable, subject to subsection ~~(17)~~ (15), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3. For purposes of this section, adverse effects analysis is specific to the proposed change in appropriation right and a determination that water is not legally available pursuant to 85-2-311 does not necessarily mean that an adverse effect will occur.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing legal demands of water rights on the state water supply, as well as projected legal

demands of water rights for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the existing legal demands of water rights placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and

procedures of 85-2-312.

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

~~(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:~~

~~(i) the appropriation right is for:~~

~~(A) ground water outside the boundaries of a controlled ground water area; or~~

~~(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;~~

~~(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;~~

~~(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:~~

~~(A) 450 gallons a minute for a municipal well; or~~

~~(B) 35 gallons a minute and 10 acre-feet a year for all other wells;~~

~~(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and~~

~~(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).~~

~~(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.~~

~~(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.~~

~~(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement well pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.~~

~~(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.~~

~~(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).~~

~~(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:~~

~~(i) withdraws water from the same ground water source as the original well; and~~

~~(ii) is required by a state or federal agency.~~

~~(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.~~

~~(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.~~

~~(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).~~

~~(17)~~(15) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

~~(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:~~

~~(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;~~

~~(ii) there are no other changes to the water right;~~

~~(iii) the capacity of the diversion is not increased;~~

~~(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;~~

~~(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;~~

~~(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;~~

~~(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;~~

~~(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and~~

~~(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).~~

~~(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.~~

~~(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of~~

~~defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.~~

~~(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).~~

~~(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.~~

~~(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.~~

~~(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion.~~"

Section 5. Section 85-2-407, MCA, is amended to read:

"**85-2-407. Temporary changes in appropriation right.** (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402, [section 1], and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be

approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. There is no limitation on the number of renewals the appropriator may seek. Renewal of an authorization for a temporary change in appropriation right requires notice to the department by the appropriator. Upon receipt of the notice, the department shall notify other appropriators potentially affected by the renewal and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change in appropriation right has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change in appropriation right is made available from the development of a new water conservation or storage project, a temporary change in appropriation right may be approved for a period not to exceed 30 years unless a renewal is obtained pursuant to subsection (3)."

NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

- END -

HOUSE BILL NO. 432

INTRODUCED BY J. DARLING, W. GALT, W. MCKAMEY, D. HARVEY, K. WALSH, R. MINER, J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WATER LAWS CONCERNING EXCEPTIONS TO THE CHANGE IN APPROPRIATION RIGHT PROCESS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 3-7-224, 85-2-309, 85-2-402, AND 85-2-407, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Changes in appropriation rights -- exceptions.** (1) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system as defined in 75-6-102 if the redundant water supply well:

(i) withdraws water from the same source aquifer as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) (i) Within 60 days of completion of a redundant water supply well and the infrastructure necessary to use the well, the appropriator shall file a correct and complete notice of change in appropriation right for redundant water supply well construction with the department on a form provided by the department. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection (1)(c)(i) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(ii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of change in appropriation right for redundant water supply well construction has been filed with the department.

(2) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and the distance between the replacement well and the well being replaced is no greater than 200 feet;

(iv) the water from the replacement well is appropriated from the same source aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct, and complete notice of change in appropriation right for a replacement well is submitted to the department as provided in subsection (2)(b).

(b) The appropriator shall file a correct and complete notice of change in appropriation right for a replacement well with the department on a form provided by the department within 60 days after completion of a replacement well and appropriation of ground water for a beneficial use.

(c) For each well that is replaced under this subsection (2), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(3) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening

water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct, and complete notice of change in appropriation right for a replacement point of diversion is submitted to the department as provided in subsection (3)(b).

(b) The appropriator shall file a correct and complete notice of change in appropriation right for a replacement point of diversion with the department on a form provided by the department within 60 days after completion of a replacement in point of diversion.

(4) (a) A municipality as defined in 7-1-4121 or a county water and sewer district organized under Title 7, chapter 13, part 22, may change the place of use for an unperfected municipal use permit or water reservation without the prior approval of the department if:

(i) the flow rate authorized by the permit or water reservation will not be exceeded;

(ii) the volume authorized by the permit or water reservation will not be exceeded;

(iii) the place of use is within:

(A) the municipality's land use plan and future land use map boundary duly adopted by the municipality pursuant to Title 76, chapter 25;

(B) the municipality's growth policy boundary duly adopted by the municipality pursuant to Title 76, chapter 1; or

(C) a county water and sewer district's service area boundary adopted under Title 7, chapter 13, part 23;

(iv) all water being diverted by the system is being measured ~~and reported annually to the department~~; and

(v) there are no other changes to the water right or rights.

(b) The appropriator shall file a correct and complete notice of change in appropriation right for municipal use with the department on a form provided by the department within 180 days of annexation by a municipality under Title 7, chapter 2, ~~part 47,~~ or addition of land to a county water and sewer district under Title 7, chapter 13, part 23.

(c) A notice of change in appropriation right for municipal use may include a change in place of use for a water right that is not an unperfected permit or water reservation if:

(i) the criteria in subsection (4)(a) are satisfied for each unperfected permit and water reservation;

(ii) the criteria in subsection (4)(a) are satisfied for each additional water right being changed;

(iii) the unperfected volume of the unperfected permit or water reservation is adequate to satisfy the additional water use needs of the entire additional place of use;

(iv) the existing place of use is the same for all rights being changed; and

(v) all rights being changed share the same common distribution system.

(5) (a) An appropriator with a water right for stock use may add, ~~or~~ move, OR REMOVE stock tanks without the prior approval of the department if:

(i) stock tanks are added to a water right for livestock direct from source;

(ii) ~~additional~~ stock tanks are added to OR REMOVED FROM an existing stock watering system; or

(iii) stock tanks are moved on an existing stock watering system.

(b) The following requirements must be met for a change filed under this subsection (5):

(i) the diverted flow rate of the stock watering system may not exceed the historical diverted flow rate of the stock watering system. If stock tanks are being added to a livestock direct from source water right, the maximum flow rate for the diversion to the tanks may not exceed 35 gallons a minute.

(ii) the number of stock animal units that will be watered on the system may not exceed the historical number of stock animal units watered;

(iii) the stock watering system infrastructure is adequate to control diversions and prevent waste of water; and

(iv) the appropriator has a possessory interest or the written consent of a person with a possessory interest in the property where the water is to be put to beneficial use or, if the proposed change involves a point

of diversion, conveyance, or place of use on national forest system lands, the appropriator has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) The appropriator shall file a correct and complete notice of change in appropriation right for stock tanks with the department on a form provided by the department within 60 days after stock tanks are added or moved.

(d) A temporary change in appropriation right for stock tanks may be authorized in accordance with 85-2-407.

(6) (a) If the department determines a notice of change in appropriation filed pursuant to subsections (1) through (5) is not correct and complete, the department shall return the notice to the appropriator, along with a notification describing the defects. A notice of change in appropriation right that is not corrected and completed within 60 days of the notification is terminated.

(b) Within 90 days of determining a notice of change in appropriation right is correct and complete, the department shall determine if the applicable criteria for issuance of a change in appropriation right are satisfied, and:

(i) if the department determines that the notice of change in appropriation right satisfies the applicable criteria in subsection (1), (2), (3), (4), or (5), the department shall issue an authorization of a change in appropriation right; or

(ii) if the department determines that the notice of change in appropriation right does not satisfy the criteria in subsection (1), (2), (3), (4), or (5), the department shall notify the appropriator, and the appropriator shall submit an application for a change in appropriation right to the department pursuant to 85-2-402.

(7) (a) If an authorization of a change in appropriation right is issued under subsection (3), (4), or (5), the department shall prepare a public notice that includes a summary of the change in appropriation right. The public notice must state that within no more than 45 days after the date of publication, a person may file with the department a written objection to the authorization of the change in appropriation right. The department shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) The department shall also serve the notice by first-class mail on:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed as defined in 70-20-115 of property that according to the records of the department may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in the department's discretion, also serve notice on any state agency or other person the department believes may be interested in or affected by the proposed appropriation.

(d) The department shall file in the department's records proof of service by affidavit of the publisher in cases of notice by publication and by affidavit of the department in cases of service by mail.

(8) (a) An objector to a change authorization issued under subsection (3), (4), or (5) shall file a correct and complete objection on a form prescribed by the department on or before the date specified in the notice provided under subsection (7).

(i) A person has standing to file an objection under this subsection (8) if the property, water rights, or interests of the person would be adversely affected by the proposed change.

(ii) The department shall adopt rules delineating the components of a correct and complete objection.

(iii) The department shall notify the objector of any defect in an objection. An objection not corrected or completed within 15 business days from the date of notification of the defect is terminated.

(iv) An objection is valid if the objector has standing, has filed a correct and complete objection within the prescribed time, and has stated the applicable information required under this subsection (8) and the rules of the department.

(v) An objection must state facts indicating that the change in appropriation right:

(A) will adversely affect the use of the water rights of the objector or of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3; or

(B) does not satisfy the applicable criteria set forth in subsection (3), (4), or (5).

(b) If a valid objection is filed, the department shall hold a contested case hearing pursuant to 85-2-309. The contested case hearing is limited to those issues for which a correct and complete objection is filed.

The appropriator changing the water right bears the burden of proof of lack of adverse effect or any of the criteria for which a correct and complete objection is filed.

(c) If the department determines after a contested case hearing on the objection that the rights of other appropriators have been or will be adversely affected or that the change in appropriation right does not satisfy the criteria set forth in subsection (3), (4), or (5), the department may revoke the change in appropriation right or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

Section 2. Section 3-7-224, MCA, is amended to read:

"**3-7-224. (Temporary) Jurisdiction of chief water judge and associate water judge.** (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309, all matters relating to the determination of existing water rights within the boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702.

(3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief water judge and the associate water judge have the same powers as a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2). (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)

3-7-224. (Effective October 1, 2025) Jurisdiction of chief water judge and associate water judge. (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief water judge and the associate water judge have the same powers as a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309, ~~or~~ 85-2-402, or [section 1] as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2)."

Section 3. Section 85-2-309, MCA, is amended to read:

"**85-2-309. Hearings on objections -- jurisdiction.** (1) If the department determines that an objection to an application for a permit under 85-2-311, ~~or~~ an application for a change in appropriation right under 85-2-402, or a notice of change in appropriation right under [section 1] states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 4. Section 85-2-402, MCA, is amended to read:

"**85-2-402. Changes in appropriation rights -- definition.** (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsections (15) and (16) of this section~~ [section 1], an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(2) Except as provided in subsections (4) through (6)~~, (15), (16), and (18)~~ and, if applicable, subject to subsection ~~(17)~~ (15), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3. For purposes of this section, adverse effects analysis is specific to the proposed change in appropriation right and a determination that water is not legally available pursuant to 85-2-311 does not necessarily mean that an adverse effect will occur.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing legal demands of water rights on the state water supply, as well as projected legal

demands of water rights for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the existing legal demands of water rights placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and

procedures of 85-2-312.

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

~~(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:~~

~~(i) the appropriation right is for:~~

~~(A) ground water outside the boundaries of a controlled ground water area; or~~

~~(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;~~

~~(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;~~

~~(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:~~

~~(A) 450 gallons a minute for a municipal well; or~~

~~(B) 35 gallons a minute and 10 acre-feet a year for all other wells;~~

~~(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and~~

~~(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).~~

~~(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.~~

~~(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.~~

~~(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement well pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.~~

~~(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.~~

~~(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).~~

~~(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:~~

~~(i) withdraws water from the same ground water source as the original well; and~~

~~(ii) is required by a state or federal agency.~~

~~(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.~~

~~(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.~~

~~(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).~~

~~(17)~~(15) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

~~(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:~~

~~(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;~~

~~(ii) there are no other changes to the water right;~~

~~(iii) the capacity of the diversion is not increased;~~

~~(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;~~

~~(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;~~

~~(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;~~

~~(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;~~

~~(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and~~

~~(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).~~

~~(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.~~

~~(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of~~

~~defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.~~

~~(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).~~

~~(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.~~

~~(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.~~

~~(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion.~~"

Section 5. Section 85-2-407, MCA, is amended to read:

"**85-2-407. Temporary changes in appropriation right.** (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402, [section 1], and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be

approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. There is no limitation on the number of renewals the appropriator may seek. Renewal of an authorization for a temporary change in appropriation right requires notice to the department by the appropriator. Upon receipt of the notice, the department shall notify other appropriators potentially affected by the renewal and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change in appropriation right has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change in appropriation right is made available from the development of a new water conservation or storage project, a temporary change in appropriation right may be approved for a period not to exceed 30 years unless a renewal is obtained pursuant to subsection (3)."

NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

- END -

AN ACT REVISING WATER LAWS CONCERNING EXCEPTIONS TO THE CHANGE IN APPROPRIATION RIGHT PROCESS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 3-7-224, 85-2-309, 85-2-402, AND 85-2-407, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Changes in appropriation rights -- exceptions. (1) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system as defined in 75-6-102 if the redundant water supply well:

(i) withdraws water from the same source aquifer as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) (i) Within 60 days of completion of a redundant water supply well and the infrastructure necessary to use the well, the appropriator shall file a correct and complete notice of change in appropriation right for redundant water supply well construction with the department on a form provided by the department. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection (1)(c)(i) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(ii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of change in appropriation right for redundant water supply well construction has been filed with the department.

(2) (a) An appropriator may change an appropriation right for a replacement well without the prior

approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and the distance between the replacement well and the well being replaced is no greater than 200 feet;

(iv) the water from the replacement well is appropriated from the same source aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct, and complete notice of change in appropriation right for a replacement well is submitted to the department as provided in subsection (2)(b).

(b) The appropriator shall file a correct and complete notice of change in appropriation right for a replacement well with the department on a form provided by the department within 60 days after completion of a replacement well and appropriation of ground water for a beneficial use.

(c) For each well that is replaced under this subsection (2), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(3) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct, and complete notice of change in appropriation right for a replacement point of diversion is submitted to the department as provided in subsection (3)(b).

(b) The appropriator shall file a correct and complete notice of change in appropriation right for a replacement point of diversion with the department on a form provided by the department within 60 days after completion of a replacement in point of diversion.

(4) (a) A municipality as defined in 7-1-4121 or a county water and sewer district organized under Title 7, chapter 13, part 22, may change the place of use for an unperfected municipal use permit or water reservation without the prior approval of the department if:

(i) the flow rate authorized by the permit or water reservation will not be exceeded;

(ii) the volume authorized by the permit or water reservation will not be exceeded;

(iii) the place of use is within:

(A) the municipality's land use plan and future land use map boundary duly adopted by the municipality pursuant to Title 76, chapter 25;

(B) the municipality's growth policy boundary duly adopted by the municipality pursuant to Title 76, chapter 1; or

(C) a county water and sewer district's service area boundary adopted under Title 7, chapter 13, part 23;

(iv) all water being diverted by the system is being measured ~~and reported annually to the department~~; and

(v) there are no other changes to the water right or rights.

(b) The appropriator shall file a correct and complete notice of change in appropriation right for municipal use with the department on a form provided by the department within 180 days of annexation by a municipality under Title 7, chapter 2, ~~part 47,~~ or addition of land to a county water and sewer district under Title 7, chapter 13, part 23.

(c) A notice of change in appropriation right for municipal use may include a change in place of use for a water right that is not an unperfected permit or water reservation if:

(i) the criteria in subsection (4)(a) are satisfied for each unperfected permit and water reservation;

(ii) the criteria in subsection (4)(a) are satisfied for each additional water right being changed;

(iii) the unperfected volume of the unperfected permit or water reservation is adequate to satisfy the additional water use needs of the entire additional place of use;

(iv) the existing place of use is the same for all rights being changed; and

(v) all rights being changed share the same common distribution system.

(5) (a) An appropriator with a water right for stock use may add, ~~or~~ move, or remove stock tanks without the prior approval of the department if:

(i) stock tanks are added to a water right for livestock direct from source;

(ii) ~~additional~~ stock tanks are added to or removed from an existing stock watering system; or

(iii) stock tanks are moved on an existing stock watering system.

(b) The following requirements must be met for a change filed under this subsection (5):

(i) the diverted flow rate of the stock watering system may not exceed the historical diverted flow rate of the stock watering system. If stock tanks are being added to a livestock direct from source water right, the maximum flow rate for the diversion to the tanks may not exceed 35 gallons a minute.

(ii) the number of stock animal units that will be watered on the system may not exceed the historical number of stock animal units watered;

(iii) the stock watering system infrastructure is adequate to control diversions and prevent waste of water; and

(iv) the appropriator has a possessory interest or the written consent of a person with a possessory interest in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the appropriator has any written

special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) The appropriator shall file a correct and complete notice of change in appropriation right for stock tanks with the department on a form provided by the department within 60 days after stock tanks are added or moved.

(d) A temporary change in appropriation right for stock tanks may be authorized in accordance with 85-2-407.

(6) (a) If the department determines a notice of change in appropriation filed pursuant to subsections (1) through (5) is not correct and complete, the department shall return the notice to the appropriator, along with a notification describing the defects. A notice of change in appropriation right that is not corrected and completed within 60 days of the notification is terminated.

(b) Within 90 days of determining a notice of change in appropriation right is correct and complete, the department shall determine if the applicable criteria for issuance of a change in appropriation right are satisfied, and:

(i) if the department determines that the notice of change in appropriation right satisfies the applicable criteria in subsection (1), (2), (3), (4), or (5), the department shall issue an authorization of a change in appropriation right; or

(ii) if the department determines that the notice of change in appropriation right does not satisfy the criteria in subsection (1), (2), (3), (4), or (5), the department shall notify the appropriator, and the appropriator shall submit an application for a change in appropriation right to the department pursuant to 85-2-402.

(7) (a) If an authorization of a change in appropriation right is issued under subsection (3), (4), or (5), the department shall prepare a public notice that includes a summary of the change in appropriation right. The public notice must state that within no more than 45 days after the date of publication, a person may file with the department a written objection to the authorization of the change in appropriation right. The department shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) The department shall also serve the notice by first-class mail on:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of

the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed as defined in 70-20-115 of property that according to the records of the department may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in the department's discretion, also serve notice on any state agency or other person the department believes may be interested in or affected by the proposed appropriation.

(d) The department shall file in the department's records proof of service by affidavit of the publisher in cases of notice by publication and by affidavit of the department in cases of service by mail.

(8) (a) An objector to a change authorization issued under subsection (3), (4), or (5) shall file a correct and complete objection on a form prescribed by the department on or before the date specified in the notice provided under subsection (7).

(i) A person has standing to file an objection under this subsection (8) if the property, water rights, or interests of the person would be adversely affected by the proposed change.

(ii) The department shall adopt rules delineating the components of a correct and complete objection.

(iii) The department shall notify the objector of any defect in an objection. An objection not corrected or completed within 15 business days from the date of notification of the defect is terminated.

(iv) An objection is valid if the objector has standing, has filed a correct and complete objection within the prescribed time, and has stated the applicable information required under this subsection (8) and the rules of the department.

(v) An objection must state facts indicating that the change in appropriation right:

(A) will adversely affect the use of the water rights of the objector or of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3; or

(B) does not satisfy the applicable criteria set forth in subsection (3), (4), or (5).

(b) If a valid objection is filed, the department shall hold a contested case hearing pursuant to 85-2-309. The contested case hearing is limited to those issues for which a correct and complete objection is filed. The appropriator changing the water right bears the burden of proof of lack of adverse effect or any of the

criteria for which a correct and complete objection is filed.

(c) If the department determines after a contested case hearing on the objection that the rights of other appropriators have been or will be adversely affected or that the change in appropriation right does not satisfy the criteria set forth in subsection (3), (4), or (5), the department may revoke the change in appropriation right or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

Section 2. Section 3-7-224, MCA, is amended to read:

"**3-7-224. (Temporary) Jurisdiction of chief water judge and associate water judge.** (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309, all matters relating to the determination of existing water rights within the boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702.

(3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief water judge and the associate water judge have the same powers as a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2). (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)

3-7-224. (Effective October 1, 2025) Jurisdiction of chief water judge and associate water judge. (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief

water judge and the associate water judge have the same powers as a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309, ~~or~~ 85-2-402, or [section 1] as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2)."

Section 3. Section 85-2-309, MCA, is amended to read:

"**85-2-309. Hearings on objections -- jurisdiction.** (1) If the department determines that an objection to an application for a permit under 85-2-311, ~~or~~ an application for a change in appropriation right under 85-2-402, or a notice of change in appropriation right under [section 1] states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this

section pursuant to 85-2-316 or 85-2-322."

Section 4. Section 85-2-402, MCA, is amended to read:

"**85-2-402. Changes in appropriation rights -- definition.** (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsections (15) and (16) of this section~~ [section 1], an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(2) Except as provided in subsections (4) through (6)~~, (15), (16), and (18)~~ and, if applicable, subject to subsection ~~(17)~~ (15), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3. For purposes of this section, adverse effects analysis is specific to the proposed change in appropriation right and a determination that water is not legally available pursuant to 85-2-311 does not necessarily mean that an adverse effect will occur.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing legal demands of water rights on the state water supply, as well as projected legal demands of water rights for future beneficial purposes, including municipal water supplies, irrigation systems,

and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and

procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the existing legal demands of water rights placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312.

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

~~(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:~~

~~(i) the appropriation right is for:~~

~~(A) ground water outside the boundaries of a controlled ground water area; or~~

~~(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;~~

~~(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;~~

~~(iii) the rate and volume of the appropriation from the replacement well are equal to or less than~~

~~that of the well being replaced and do not exceed:~~

~~(A) 450 gallons a minute for a municipal well; or~~

~~(B) 35 gallons a minute and 10 acre-feet a year for all other wells;~~

~~(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and~~

~~(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).~~

~~(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.~~

~~(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.~~

~~(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement well pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under~~

~~85-2-404.~~

~~(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.~~

~~(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).~~

~~(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:~~

~~(i) withdraws water from the same ground water source as the original well; and~~

~~(ii) is required by a state or federal agency.~~

~~(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.~~

~~(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.~~

~~(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).~~

~~(17)~~(15) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

~~(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:~~

~~(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;~~

~~(ii) there are no other changes to the water right;~~

~~(iii) the capacity of the diversion is not increased;~~

~~(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;~~

~~(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;~~

~~(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;~~

~~(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;~~

~~(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and~~

~~(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).~~

~~(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.~~

~~(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.~~

~~(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).~~

~~(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.~~

~~(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.~~

~~(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion.~~"

Section 5. Section 85-2-407, MCA, is amended to read:

"**85-2-407. Temporary changes in appropriation right.** (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402, [section 1], and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for

consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. There is no limitation on the number of renewals the appropriator may seek. Renewal of an authorization for a temporary change in appropriation right requires notice to the department by the appropriator. Upon receipt of the notice, the department shall notify other appropriators potentially affected by the renewal and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change in appropriation right has been approved is

transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change in appropriation right is made available from the development of a new water conservation or storage project, a temporary change in appropriation right may be approved for a period not to exceed 30 years unless a renewal is obtained pursuant to subsection (3)."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

- END -

I hereby certify that the within bill,

HB 432, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2025.

_____

President of the Senate

Signed this _____day

of_____, 2025.

HOUSE BILL NO. 432

INTRODUCED BY J. DARLING, W. GALT, W. MCKAMEY, D. HARVEY, K. WALSH, R. MINER, J. COHENOUR

AN ACT REVISING WATER LAWS CONCERNING EXCEPTIONS TO THE CHANGE IN APPROPRIATION RIGHT PROCESS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 3-7-224, 85-2-309, 85-2-402, AND 85-2-407, MCA."